CRL MP NO. 6339/00 IN CRL APP. 788 OF 2000

The Accused/Applicant was directed to be released on bail by the order of this Court dated 13.4.1999 in CRL MP NO. 6339/00 in CA 788/00

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.788 of 2000

Chenrayan .. Appellant/Accused

Vs.

State rep by
The Inspector of Police,
Pennagraham Police Staition,
Pennagraham Circle,
Dharmapuri District. ..
Respondent/Complainant

Prayer:- This appeal has been preferred against the judgment dated 7.8.2000 made in S.C.No.201 of 1998 on the file of the III Additional Sessions Judge, Krishnagiri at Dharmapuri District.

For Appellant :Mr.C.Kanagaraj

For Respondent :Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.201 of 1998 on the file of the III Additional Sessions Judge, Krishnagiri at Dharmapuri.

2.On the complaint preferred by P.W.1, the accused has been charged under Section 302 & 404 IPC. The learned Judicial Magistrate, Palacode, the committal Court, had issued summons to the accused and on his appearance furnished copies under Section 207 of Cr.P.C., and since the case is triable by the Court of Sessions, the Judicial Magistrate has committed the case to the Court of Sessions under Section 209 of Cr.P.C.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3.The learned Sessions Judge on appearance of the accused had framed charges under Section 302 & 404 IPC and when the charges were explained to the accused and questioned he pleaded not guilty. On the side of the prosecution P.W.1 to P.W.16 were examined and Ex.P.1 to Ex.P.17 were exhibited and M.O.1 to M.O.14 were marked.

4.P.W.1 is the son of the deceased. He would depose that the accused is his uncle's son. According to him, about 9 years before to his deposition before the Court during a month of 'Puratasy', he was at Pallipalayam on a sunday and also on a Monday and thereafter left Pallipalayam on Tuesday and after hearing about the death of his mother on Thursday, while he was attending to the funeral of the mother of one Govindan at Pudur, he returned to his house and found his mother was lying dead with an injury on the throat as well as on her shoulder and hands and further her ear lobes were also found cut and the pair of ear stud used by her mother were also found missing. On suspicion against his brother Muniyen Chetty, he preferred a complaint with the VAO and Ex.P.1 is the complaint preferred by the him before the VAO, who informed the police, who enquired him. He has also identified M.O.2(series) are the pair of ear studs belonging to his mother.

5.P.W.2 is a neighbour of the deceased Papa. According to him, since there was a repair work carried out in his house, he used to sleep in the pial of the house of the deceased Papa and the grand children of Papa also used to sleep there. According to him, on Tuesday the accused came to the house of the deceased Papa and stayed there. But in the early morning, he (P.W.2), the grandson of the deceased Papa viz. Mathesh and the granddaughter of the deceased Papa viz.Mani @ Thavamani left the house, and the accused and the deceased Papa alone were in the house on Wednesday and that he returned to the house on Wednesday night at about 8.00 pm at that time Papa was not found in the house. Thinking that she would have gone elsewhere, he (P.W.2) slept outside the house on the pial and in the midnight he became thirsty, so he got up and went inside the kitchen of the house of the Papa in order to drink water and it was pitch dark inside the house, he contacted with some object, immediately he struck a match stick and in the match stick light he saw the dead body of Papa in the kitchen. Immediately he came out of the house and brought the younger son of Papa viz. Muniyan Chetty, the suspected accused in the FIR. He also found cut injury on the neck of the corpse of Papa and also cut injury on her right hand and shoulder and both ear lobes were found severed.

6.P.W.3 is the granddaughter of the deceased Papa. According to her, she along with his brother P.W.2 used to sleep in the house of the deceased Papa during night and on one Tuesday at about 8.00 pm the accused came to the house of Papa and the accused is the brother's son of the deceased Papa. According to her, she was sleeping along which his grandmother in a cot outside the house and that the accused, his brother Mathesh and P.W.2 were sleeping on

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the pial of the house of the deceased and on the early morning on Wednesday at about 6.00 am, she and Mathesh left their house and that the accused and P.W.2 were sleeping in the house of the deceased on the varanda. As usual she came to her grandmother's house on Wednesday at about 6.00 pm to stay there she could not see his grandmother in the house and that thinking that his grandmother would have gone to her sister's house, she and her brother left to their house and at about 1200 midnight P.W.2 came and informed her father that her grandmother was lying dead. He immediately went to the house of Papa and saw her dead body and that the police came to the place of occurrence on Friday.

7.P.W.4-Maliga, who is known to the deceased and also a neighbour running a tea stall, would depose that Papa was living in her house alone and that her eldest son P.W.1 is at Pallipalayam and her second son Muniyan Chetty was staying in a hut in the field. According to P.W.4, the accused is known to him and the accused used to sleep with the grand children of the deceased Papa in the pial of the house of the deceased. According to her, some nine years prior to her deposition before the court, she saw the accused coming out of the house of the deceased at about 7.00 am and was proceeding towards south and that she has not seen Papa throughout the day of Wednesday and that at about 12.00 midnight P.W.2 raised an alarm and the villagers went and saw the body of Papa inside the house.

8.P.W.5 is the VAO, Kandenahalli village. According to him, on 11.10.1991 at about 5.00 am while he was in his village Pazhayaoor P.W.1 came and prefer a compliant which was recorded by him and after reading the contents of his statement he had obtained the thumb impression of P.W.1 below the statement. He also accompanied P.W.1 to Pudur and saw the corpse of the deceased Papa. He has prepared a special report Ex.P.2 in the printed form and prepared three copies for the same and along with his special report he had sent the statement of P.W.1 to the Pennagraham Police Station through his assistant Kuppusamy and that he waited at the place of occurrence till the arrival of the police at 11.00 am.

9.P.W.14 is the then Sub-Inspector of police, Prumpalai Police Station. After receiving Ex.P.1-complaint along with Ex.P.2-special report of the VAO (P.W.5), he had registered the case under Cr.No.901 of 1991 under Section 302 & 380 IPC. Ex.P.15 is the FIR. He had despatched the express FIR to the concerned officials including the Judicial Magistrate.

10.P.W.15 is the Investigating Officer, who had visited the place of occurrence after receiving the FIR on 11.10.19991 at about 11.30 am and prepared observation mahazar Ex.P.3 in the presence of P.W.5 and another witness. From the place of occurrence he had seized M.O.2-blood stained sand, M.O.3-sample sand and M.O.4-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Aruvamanai under Ex.P.4 recovery mahazar in the presence of P.W.5. He has examined the witnesses and recorded their statements. He has conducted inquest on the corpse of the deceased in the presences of the panchayatdars. Ex.P.17 is the inquest report. The corpse was sent for post-mortem through P.W.13 on 11.10.1991 at about 3.40 pm.

11.P.W.6 is the doctor, who had conducted the autopsy on the corpse of the deceased Papa. Ex.P.5 is the letter of requisition given by P.W.15 to the doctor for conducting autopsy. He could find both the ear lobes of the deceased was found severed. He has also seen the windpipe of the deceased found cut and there was lacerated injuries found on the right forearm. He has also found the hyoid bone of the deceased fractured. The doctor has opined that due to asphyxia due to the fracture of the hyoid bone due to strangulation and also due to the cut injury in the wind pipe the deceased would have breathed her last. Ex.P.6 is the postmortem certificate. He has further opined that the cut injury on the windpipe of the deceased would have been caused by a weapon like M.O.4.

12.P.W.13 is the post mortem constable. He has recovered M.O.6-saree, M.O.7-cloth, M.O.8-nose screw, M.O.9-silver bangle, M.O.10-another silver bangle, M.O.11-ring, M.O.12-toe ring, M.O.13-another toe ring and M.O.14-black beads from the dead body of the deceased and handed over the same to the Inspector of Police.

13.P.W.15 had conducted further investigation. He had examined the other witnesses. On 14.10.1991 he had examined the suspected accused Muniyan Chetti and he has also examined the doctor and other witnesses and recorded their statements. On 25.10.1991 he had arrested the accused and recorded the voluntary confession statement given by the accused which was recorded by him in the presence of P.W.8-Rajendran, another VAO. On the basis of the confession statement of the accused, he had proceeded to Bangalore along with the accused and other witnesses P.W.8-Rajendran and P.W.10-Chinnakannu and at about 8.00 pm on 25.10.1991 he had recovered M.O.1(series) pair of ear studs, which were produced by P.W.12-Shanthilal on the information furnished by the accused. He has also examined P.W.9-Santha, P.W.10-Chinnakannu, P.W.11-Nithiyanatham and P.W.12-Shanthilal and recorded their statements at Bangalore and Pennaharam. He returned to Pennaharam on 26.10.1991 early morning along with the accused and the properties seized and produced the accused before the Judicial Magistrate, Pennaharam for judicial remand. On 3.11.1991 he had given a letter of requisition to the Court for sending the material objects seized in this case for chemical analysis.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14.P.W.8-Rajenderan would corroborate the evidence of P.W.15 to the effect that on 25.10.1991 the confession statement of the accused was recorded by P.W.15 in his presence and as per the confession statement of the accused he also accompanied P.W.15 along with Nithiyanantham(P.W.11) to Korandapalayam, Bangalore from where M.O.1-ear studs of the deceased were recovered from Santhilal (P.W.12), a pawn broker, under Ex.P11-mahazar, in which he has signed as a witness along with other witnesses. Ex.P.13 is the pawn receipt for M.O.1 (series) ear studs being pledged with P.W.12, which was recovered under Ex.P.14-mahazar in the presence of P.W.8. P.W.8 would further depose that the accused had handedover M.O.5-bed sheet, said to have been purchased by the accused at Bangalore near the pawn broker shop of P.W.12.

15.P.W.9-Santha, a resident of Pennaharam, would depose that she knows about the accused who is a neighbour of her sister. According to her, some 9 years prior to the date of her deposition before the court at about 9.00 am, the accused came to her house and informed that he had to go to Bangalore in search of a job and that there was some misunderstanding arose between him and his aunt and that he want to go to Bangalore to secure a job and for that purpose he requested her to furnish the address of a known person to her. P.W.9 had informed the accused that her sister's husband will go to bangalore and also requested the accused to go along with him.

16.P.W.10 is the relative of P.W.9-Santha. According to him, he had seen the accused in the house of Santha and at the request of Santha, he had taken the accused to Bangalore and left him in the house of Nithiyanantham-P.W.11.

17.P.W.11-Nithiyanantham had also admitted that some 9 years prior to the date of his deposition before the Court on a Thursday at about 11.00 am, P.W.10-Chinnakannu and the accused came to his house and the accused informed him that he has to go to Bangalore in search of a job and requested him to secure accommodation, for that he told him that to secure an accommodation at Bangalore may incur substantial expenditure, to which the accused said that he has no money but he is having the gold ornaments given by his mother and by pledging the same he can raise the required amount and at the request of the accused he (P.W.11) took him to the pawn broker shop owned by one Shanthilal (P.W.12) and at the request of P.W.12 pawn receipt was taken in his name since the accused is as stranger to P.W.12. P.W.12 gave Rs.1,000/- to P.W.11 after taking M.O.1(series) pair of ear studs produced by the accused and that he has also signed in the pawn receipt Ex.P.13 and that he returned to his house along with accused and on the next morning he left for

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

his job and the accused also left the house by saying that he will return after securing a job but he never turn up thereafter and that 15 days later the police brought the accused to his house at about 7.30 pm and enquired about the accused and he handed over the pawn receipt Ex.P.13 (wrongly mentioned as Ex.P.5 in the deposition of P.W.11) and also the bed sheet purchased by the accused near the pawn broker shop of P.W.12. M.O.5 is the bed sheet purchased by the accused.

18.P.W.12-Shanthilal, the pawn broker, who is running a pawn broker shop at Korakandapalayam at Bangalore, would depose that on 10.10.1991, P.W.11-Nithiyanantham had brought a person and produced a pair of ear studs and requested him to take the same on pledge for a sum of Rs.1000/-. He also gave Rs.1,000/- on pledge. P.W.12 would identify Ex.P.13 as the receipt given by him to P.W.11-Nithiyanantham after taking M.O.1(series) pair of ear stud on pledge. He would further depose that on seeing Ex.P.13-receipt produced by the police he handed over M.O.1(series) pair of ear studs, which were pledged with him by P.W.1, to the police.

19.P.W.16 is the successor of P.W.15, who had filed the charge sheet against the accused on 23.7.1992 under Section 302 & 404 IPC after completing the investigation.

20.When incriminating circumstances were put to the accused, the accused would deny his complicity with the crime. The learned trial judge, after scanning the evidence both oral and documentary and after giving due deliberations to the submission made by the learned counsel appearing for the accused as well as the Assistant Public Prosecutor, has come to the conclusion that the accused is guilty under Section 304(i) & 404 IPC and accordingly convicted the accused under Section 304(i) IPC and sentenced him to undergo 5 years RI and slapped a fine of Rs.500/- with default sentence and also convicted the accused under Section 404 IPC and sentenced to undergo one year RI and a fine of Rs.250/- with default sentence. Aggrieved by the findings of the learned trial judge the accused has preferred this appeal.

21.Now the point for determination in this appeal is whether the conviction and sentence of the trial Court under Section 304(i) & 404 IPC is liable to be set aside for the reasons stated in the memorandum of appeal?

22.The Point:- 22(a) Heard the learned counsel for the appellant Mr.C.Kanagaraj who would contend that in Ex.P.1-complaint there is no whisper about the accused and according to the author of Ex.P.1, the suspected accused is his (P.W.1's) own brother Muniyan Chetti. But P.W.15 had foisted the case against the accused, who is no way connected with this crime. P.W.1 is not an eye witness to the occurrence. In fact P.W.1 was not in the village at the time of occurrence. P.W.2 alone had seen the dead body of the deceased in the night of 9/10.10.1991 i.e on the night

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of one Wednesday. P.W.2 has seen the accused, who is none other than the brother's son of the deceased Papa on the previous night i.e. On 8.10.1991, Tuesday. According to him, he also used to sleep in the house of the deceased papa since some repair work is being conducted in his house, and that on 8.10.1991 night he (P.W.2), the accused and the granddaughter and grandson of the deceased stayed in the night in the house of the deceased Papa. On 9.10.1991 Wednesday early morning, according to P.W.2, he along with the grandson & granddaughter of the deceased left the house of the deceased and at that time the accused and the deceased Papa alone were in the house. P.W.2 returned to the house of Papa on Wednesday i.e. On 9.10.1991 at about 8.00 pm, but he could not see Papa in the house, thinking that she would have gone for some work, he laid down on the veranda of her house and woke up in the midnight due to thirst and he went inside the house to drink water and saw the dead body of Papa in the kitchen and immediately he had raised an alarm and the neighbours gathered and saw the deceased lying dead with a cut injury on her neck. P.W.2 has categorically stated in the evidence that the suspected accused Muniyan Chetti was present at the time and he (P.W.2) only brought Muniyan Chetti to the place of occurrence after informing about the lying down of the dead body of Papa in her house. So it is clear from the evidence of P.W.2 that even after the occurrence the suspected accused Muniyan Chetti was present in the locality and he was brought to the place of occurrence only by P.W.2. If the suspected accused Muniyan Chetti would have committed the murder then certainly he would have absconded from the place of occurrence. A reading of Ex.P.1-complaint preferred by P.W.1, the brother of the suspected accused Muniyan Chetti, is that Muniyan Chetti used to quarrel with the deceased, who is none other than his mother, for money. In Ex.P.1 P.W.1 has stated that his mother Papa was having 10 acres of land and some 3 years before the date of occurrence the deceased Papa had partitioned in equal moieties the land in favour of P.W.1 and his brother Muniyan Chetti after reserving 2 acres of land for her maintenance and that his (P.W.1's) brother Muniyan Chetti had cultivated the land left apart for the maintenance of the deceased Papa for nearly three years but failed to give the income derived out of that land. Further Ex.P.1 would read that the suspected accused Muniyan Chetti had borrowed Rs.5000/- from his mother, the deceased Papa, and refused to return the same and some 1 ½ years prior to the date of occurrence the deceased Papa had sold her jewels and gave Rs.5000/- out of the sale proceeds of her jewels to P.W.1 and the balance of Rs.3000/- was given to one Karumalai for interest on a hand loan and this is the motive suggested by P.W.1 in Ex.P.1 against the suspected accused Muniyan Chetti, the brother of P.W.1, to murder his mother Papa. Since P.W.1 is not an eye witness, the fact thar he had suspected his brother will not derive us to a conclusion that the offence should have been committed only by Muniyan Chetti, the other son of the deceased Papa.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

22(b) In this case the Investigating Officer has took lot of pain in fixing the real culprit. The learned counsel for the appellant/accused would contend that the accused also absconded even as per the evidence of P.W.15. P.W.15 went to the place of occurrence on 11.10.1991. He has examined the witnesses on that day during his investigation. On 11.10.19991 admittedly Ex.P.1-complaint was preferred against Muniyan Chetti by his own brother P.W.1. The suspected accused Muniyan Chetti was present even on 9.10.1991 i.e., on the date of occurrence and he has been seen by P.W.2. After lodging of the complaint-Ex.P.1 on 11.10.1991, he had absconded. But on 14.10.1991, it is the evidence of P.W.15, that he had examined Muniyan Chetti, the suspected accused. So on 14.10.1991 Muniyan Chetti was physically present and was examined by the police. In the investigation which took place between 11.10.1991 and 14.10.1991 the Investigating Officer has fixed the real accused viz. the present accused Chenrayan. P.W.15 had arrested the accused on 25.10.1991 and has recorded the voluntary confession statement of the accused Chenrayan in the presence of P.W.8-Rejenderan. The admissible portion of the confession statement of the accused before P.W.8 is that he used to visit the house of his aunt (father's sister) the deceased Papa very often and that on one occasion he had lent Rs.5000/- to the deceased Papa on her request and when he asked his aunt to return the said hand loan, under some pretext or other she was postponing the payment and even on the date of occurrence he went to the house of his aunt, the deceased Papa, and demanded to return the money and since she has informed him that she is not having any money, he had asked her to give her ear studs, so that he will pledge the same and raise the money. Since that request also was turned down by her, he got enraged and strangulated her with his hands and after she became unconscious and fell down on the ground, with the help of an aruvalmanai he cut her throat and also severed the ear lobes and removed the ear studs and thereafter went to Pennagaram where P.W.9's sisters was residing in order to sell the ear studs and with the help of one Nithiyanantham he pledged the same with P.W.12. This part of the confession statement of the accused was corroborated by the evidence of P.W.9 to P.W.12.

22(c) P.W.9 in her evidence has categorically stated that some 9 years prior to her deposition before the Court the accused came to her house and requested her to furnish the address of a known person to enable him to secure a job at Bangalore. P.W.10-Chinnakannu, who was arranged by P.W.9 to take the accused to Bangalore and left the house of Nithiyanantham, has also corroborated the evidence of P.W.9. P.W.11 has also corroborated the evidence of P.W.10 to the effect that P.W.10 had brought the accused to his house and only on his request the ear studs were pledged with P.W.12-Shanthilal for Rs.1000/-. P.W.11 has also identified M.O.1 is the pair of ear studs produced by the accused

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

for pledging the same. P.W.12 has corroborated the evidence of P.W.11 to the effect that P.W.11 along with another person came to his pawn shop on 10.10.1991 and pledged M.O.1-ear studs for Rs.1000/-. He has also identified M.O.1 as pair of ear studs and also admitted that Ex.P.13 is the pawn receipt issued by him in the name of Nithiyanantham, since the person who accompanied Nithiyanantham is a stranger to him.

22(d) The learned counsel for the appellant would raise a contention that the accused has not committed the crime of murder because the other ornament viz. M.O.8-pair of nose screws, M.O.9-silver bangle, M.O.10-another silver bangle, and M.O.11-ring, M.O.12-toe ring, M.O.13-another toe ring and M.O.14-black beads were found on the dead body of the deceased Papa. But the fact remains that even according to the confession statement Ex.P.12 the accused had demanded the deceased to return Rs.5000/- borrowed from him and after hearing that she had no cash on hand, he had asked to give only the ear studs to make good the amount of Rs.5000/- by selling the same. Except the nose screws M.O.8, the other M.Os.9 to 14 are all silver articles. After committing the murder it is convenient for the accused to sever the ear studs with the weapon viz. Aruvamanai (M.O.4) and removed the ear studs. The fact that the accused had not removed M.O.8 to M.O.14 will not in any way derive us to come to the conclusion that the accused would not have committed the offence in lieu of the evidence in abundance available against the accused apart from the confession statement and recovery of M.O.1 under Section 27 of the Evidence Act by the Investigating Officer.

22(d)The learned counsel for the appellant would further contend that the delay in filing the FIR is also not taken note of by the learned trial Judge. From the evidence of P.W.2 it is seen that the offence would have been committed in the midnight on 9.10.1991. Admittedly the complainant viz. the eldest son of the deceased Papa, was not in the house. He came to the village only on 10.10.1991. So he had preferred the complaint before the VAO-P.W.5 on 11.10.1991 since P.W.1 could not fix the accused, he on suspicion has preferred Ex.P.1 against his own brother Maniayan Chetti, since there is no clue available for him to fix the accused. Only in the investigation it was revealed that the heinous crime was committed by the accused. The important factor that the suspected accused has not absconded from the place of occurrence even on the date of occurrence till the complaint was preferred againsthim on 11.10.19991 itself will go to show that the suspected accused had no hand in the crime.

22(e)The learned counsel for the accused lastly would contend that the sentence against the accused may be reduced. But the learned trial jduge has convicted the accused only under Section 304(i) & 404 IPC and awarded only 5 Years RI under Section 304(i)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

IPC and one year RI under Section 404 IPC, besides fine, with a direction that the sentence shall run concurrently. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge and the punishment awarded against the accused cannot be said to be disproportionate when compared to the gravity of the heinous crime committed by him. Point is answered accordingly.

23. In fine, the appeal fails and the same is dismissed confirming the findings of the learned trial judge in S.C.No.201 of 1998 on the file of the III Additional Sessions Judge, Krishnagiri at Dharmapuri. The learned trial judge is directed to secure the accused and send him to the prison to serve the unexpended portion of the sentence.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The III Additional Sessions Judge,
Krishnagiri at Dharmapuri.

2.The Principal Sessions Judge,
Krishnagiri at Dharmapuri.

3.The Judicial Magistrate No.I,
Salem.

4.-do-The Chief Judicial Magistrate, Salem.

5.The Public Prosecutor, High Court, Madras.

6.The Inspector of Police,
Pennagaram Police Station,
Pennagaram Circle,
Dharmapuri District.

7.The Superintendent, Central Prision,
Vellore.

8. The District Collector, Dharmapuri

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. The Director General of Police, Chennai 4

+ one cc to M/s. C. Kanagaraj Associates, sr no. 45209

A.C.ARUMUGAPERUMAL ADITYAN, J.

ssv

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

21.07.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/